



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/164103

PRELIMINARY RECITALS

Pursuant to a petition filed February 23, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on April 02, 2015, at Waukesha, Wisconsin. The record was held open post-hearing for the agency to review and revise, if necessary, the overpayment and for the Petitioner to submit additional information or a response to any revision. On April 10, 2015, the agency submitted revised worksheets and reduced the overpayment from \$8,784 to \$8,626. On April 15, 2015, the Petitioner submitted a response to the agency's revision. The record was closed on April 15, 2015.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$8626 for the period of March 20, 2009 – November 30, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Nick Kwaw
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. On March 20, 2009, the Petitioner completed an online ACCESS application for FS benefits. She reported total monthly household income of \$690. She reported a job at the [REDACTED] earning \$7/hour, 29 hours/week. She reported monthly housing expenses of \$613.58 and utility expenses of \$162/month.
3. On April 13, 2009, the Petitioner submitted a paper application to the agency. On that application, the Petitioner reported that she receives \$200-300/month from a relative to help pay her mortgage. The application was signed by the Petitioner on April 8, 2009 and by an agency witness on April 13, 2009.
4. On April 22, 2009, the agency issued a Notice of Decision to the Petitioner informing her that it had approved her application and she would receive \$59 in FS benefits for March, 2009 and \$178/month effective April 1, 2009. This was based on gross monthly household income of \$827.75 from earned income and shelter costs of \$882.59 (mortgage, property taxes and insurance). The notice also informed the Petitioner that if her gross monthly income exceeds \$1,127, she must report it to the agency by the 10th day of the next month.
5. On August 3, 2009, the Petitioner submitted a Six Month Report Form (SMRF). She reported employment at [REDACTED]. She reported no other household income.
6. On October 7, 2009, the Petitioner submitted an online renewal application for FS benefits. She reported earned income from [REDACTED] of \$7.25/hour, 24 hours/week plus holiday pay. She reported no other household income.
7. On August 2, 2010, the Petitioner submitted a SMRF. She reported earned income from the [REDACTED]. She reported no other household income.
8. On February 18, 2011, the agency issued a Notice of Decision to the Petitioner informing her that she would continue to receive FS benefits of \$200/month effective March 1, 2011. This was based on gross income of \$639.09/month from earned income, shelter costs of \$702.34 plus utilities. The notice also informed the Petitioner that if her gross monthly income exceeds \$1,174/month, she must report it to the agency by the 10th day of the next month.
9. On August 19, 2013, the agency issued a Notice of Decision to the Petitioner informing her that she would continue to receive FS benefits of \$166/month effective September 1, 2013. This was based on gross income of \$912.46/month from earned income, shelter costs of \$647.26/month plus utilities. The notice also informed the Petitioner that if her gross monthly income exceeds \$1,211/month, she must report it to the agency by the 10th day of the next month.
10. On September 8, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she would continue to receive FS benefits of \$166/month effective October 1, 2014. This was based on gross income of \$921.92/month from earned income, shelter costs of \$651.30/month plus utilities. The notice also informed the Petitioner that if her gross monthly income exceeds \$1,265/month, she must report it to the agency by the 10th day of the next month.
11. On November 14, 2014, the agency conducted a phone interview with the Petitioner. At that time, the Petitioner reported that her father gave her money to help pay her mortgage.
12. On December 19, 2014, the Petitioner's father submitted a statement to the agency. The statement indicates that in late 2006/early 2007, he gave the Petitioner \$600 each month for her mortgage. In November, 2014, he was advised that he should pay the mortgage company directly and he started to do so in November, 2014.
13. On December 29, 2014, the Petitioner met with an agency representative and signed a Waiver of Administrative Disqualification Hearing. The waiver advised the Petitioner that the agency determined she had committed an intentional program violation for failure to report unearned income on her FS applications and renewals. On the Waiver, the Petitioner wrote that her actions were "not intentional." In addition, Petitioner checked a box that states: "I do not admit that the

facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty will result.”

14. On January 5, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would end effective February 1, 2015.
15. On January 15, 2015, the agency issued notices of FS overpayment and worksheets to the Petitioner informing her that the agency intends to recover overissuances of FS benefits as follows:

Claim #	██████████	\$1,690	3/20/2009 – 2/28/2010
Claim #	██████████	\$1,518	3/1/2010 – 2/28/2011
Claim #	██████████	\$ 616	3/1/2011 – 6/30/2011
Claim #	██████████	\$ 806	7/1/2011 – 12/31/2011
Claim #	██████████	\$1,075	6/1/2012 – 12/31/2012
Claim #	██████████	\$ 608	3/1/2013 – 6/30/2013
Claim #	██████████	\$ 600	8/1/2013 – 11/30/2013
Claim #	██████████	\$ 432	12/1/2013 – 2/28/2014
Claim #	██████████	\$ 564	3/1/2014 – 6/30/2014
Claim #	██████████	\$ 723	7/1/2014 – 11/30/2014

3. On February 25, 2015, the Petitioner submitted a payment of \$20 to the agency as repayment.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. *Id.*

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken by it was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

At the hearing, the agency initially testified that the Petitioner did not report that her father paid her money each month for her mortgage until November, 2014. The agency testified that she was receiving money from her father at the time of her March, 2009 application as evidenced by a page from an application signed in April, 2009 where the Petitioner did report that her father gives her \$200-300/month for her mortgage. The agency testified this was from a W-2 application though there is no indication on that exhibit or any other that the Petitioner applied for W-2. The agency denied that this April, 2009 application was part of her FS application.

The Petitioner testified credibly that she never applied for W-2 and that, in April, 2009, the only program she had applied for was FS. Post-hearing, the agency's statement accompanying revised overpayment

worksheets seems to concede that the Petitioner did report the unearned income as part of her FS application and concedes there was agency error in failing to verify and budget the income.

Though an overissuance appears to have been caused initially by the agency's failure to verify and budget the reported income, the Petitioner subsequently had a responsibility to report if her monthly income exceeded 130% FPL. The notices supplied to the Petitioner told her of the reporting requirements.

The evidence regarding how much the Petitioner's father gave the Petitioner each month is inconsistent and inconclusive. The written statement by the Petitioner's father in December, 2014 indicates that he has been giving her \$600/month since 2006 or 2007. See Finding of Fact #12. However, at the hearing, the Petitioner and her father testified that the amount he gave her varied depending on the Petitioner's earned income for the month. The Petitioner's father testified that \$600/month was his best estimate for recent years but that the amount varied depending on the Petitioner's circumstances. He further testified that he supplied several written statements to the agency in November and December, 2014, each at the request of the agency. He testified that he was trying to provide the information they required but he was confused about what they needed from him. Petitioner testified that she did not keep any record of how much her father gave her. The Petitioner testified credibly that the amount of money her father gave her was used exclusively to pay the mortgage. I further note that the Petitioner's father was a co-signor on the mortgage loan and thus had a legal obligation to pay the mortgage. I find the testimony that the money was used exclusively for the mortgage to be credible. I also conclude that the testimony that the amount of money varied depending on the Petitioner's circumstances is credible.

As noted above, the agency has the initial burden of proof to demonstrate that there was an overpayment. In this case, the best evidence of the Petitioner's income from her father is the testimony of the Petitioner and her father that the income varied from \$200-600, depending on the level of earned income of the Petitioner in a given month. Without additional evidence, it is not possible to determine when the Petitioner exceeded the reporting requirements. Therefore there is insufficient evidence to determine whether or when there may have been a client error for not reporting.

I also note that, had the agency followed up on the Petitioner's report of receiving money from her father for the mortgage, the Petitioner's father would have been informed that if he paid the money directly to the mortgage company, it would not count as unearned income for the Petitioner. When he learned of this in November, 2014, he immediately began paying the mortgage company directly. Had the agency informed the Petitioner at the time she reported the unearned income, there likely would have been no basis for establishing an overpayment.

Because I conclude that any overpayment was the result of agency error in failing to request verification and failing to properly budget the Petitioner's income after she reported that she received money from her father, the agency can seek only to recover any overissuance that occurred within 12 months of the date the agency discovered the overissuance. In this case, the agency discovered the possible overissuance on or about November 14, 2014. Based on the evidence that the Petitioner received between \$200-600 from her father and the evidence of the Petitioner's earned income, I conclude the preponderance of the evidence suggests that the Petitioner received an overissuance of FS benefits.

I am remanding the matter back to the agency to re-determine the amount of the overissuance from December, 2013 – November, 2014. In the current worksheets, the agency did not apply an earned income deduction in determining the overissuance. This is proper when the overissuance is due to the Petitioner intentionally failing to report income. In this case, I conclude the overissuance is due to agency error in improperly budgeting the Petitioner's reported income. Based on the statement and testimony of the Petitioner's father that \$600/month was his most recent best estimate of the amount he had been providing to the Petitioner, the agency may use that amount as unearned income.

CONCLUSIONS OF LAW

The agency may not seek to recover any overissuance of FS benefits against the Petitioner for the period of March, 2009 – November, 2013 due to agency error in failing to verify and properly budget Petitioner's income.

The agency must re-determine the amount of any overissuance for the period of December, 2013 – November, 2014 based on the Petitioner's earned income and unearned income of \$600/month and must apply the earned income deduction as well as any other deduction to which the Petitioner is entitled.

THEREFORE, it is

ORDERED

This matter is remanded to the agency to take all administrative steps necessary to rescind any and all overissuance claims for the Petitioner for the period of March, 2009 – November, 2013 and cease all collection action on those claims immediately. In addition, the agency shall re-calculate any overissuance for the period of December, 2013 – November, 2014 based on the Petitioner's earned income and unearned income of \$600/month and shall apply an earned income deduction as well as any other deduction to which the Petitioner is entitled. The agency shall issue a new notice of FS overissuance with worksheets to the Petitioner and shall provide new appeal rights. These actions shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

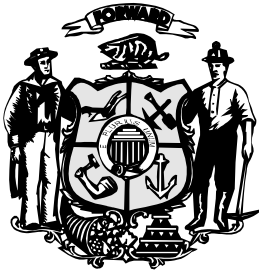
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 23rd day of April, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 23, 2015.

Public Assistance Collection Unit
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Division of Health Care Access and Accountability